

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

JOHN DUNCAN, #180841, )  
                                )  
Plaintiff,                 )  
                                )  
v.                           ) CIVIL ACTION NO. 2:07-CV-634-MHT  
                                )  
JOHN CUMMINGS,            )  
                                )  
Defendant.                 )

**ORDER ON MOTION**

On August 14, 2007, the plaintiff filed a motion for leave to amend (Court Doc. No. 10). In this motion, the plaintiff seeks to add Richard Allen as a defendant in this cause of action due to his serving as Commissioner of the Alabama Department of Corrections. Upon consideration of the motion for leave to amend, and as the plaintiff's claims against Richard Allen are based solely on a theory of respondeat superior, it is

ORDERED that this motion be and is hereby DENIED. *Monell v. Dep't of Social Servs.*, 436 U.S. 658, 690-92, 98 S.Ct. 2018, 2036, 56 L.Ed.2d 611 (1978) (defendant cannot be held liable in an action brought pursuant to 42 U.S.C. § 1983 under the theory of respondeat superior or on the basis of vicarious liability); *Miller v. King*, 384 F.3d 1248, 1261 (11<sup>th</sup> Cir. 2004) ("[S]upervisory officials are not liable under § 1983 for the unconstitutional acts of their subordinates on the basis of respondeat superior or vicarious liability."); *Gonzalez v. Reno*, 325 F.3d 1228, 1234 (11<sup>th</sup> Cir. 2003) (concluding supervisory officials are not liable on the basis of respondeat superior or vicarious liability); *Hartley v.*

*Parnell*, 193 F.3d 1263, 1269 (11<sup>th</sup> Cir.1999), citing *Belcher v. City of Foley*, 30 F.3d 1390, 1396 (11<sup>th</sup> Cir. 1994) (42 U.S.C. § 1983 does not allow a plaintiff to hold supervisory officials liable for the actions of their subordinates under either a theory of respondeat superior or vicarious liability.); *Cook ex rel. Estate of Tessier v. Sheriff of Monroe County, Florida*, 402 F.3d 1092, 1115-1116 (11<sup>th</sup> Cir.2005) (In establishing liability under § 1983, a prisoner cannot rely on theories of vicarious liability or respondeat superior.).

Done this 15th day of August, 2007.

/s/ Charles S. Coody  
CHARLES S. COODY  
CHIEF UNITED STATES MAGISTRATE JUDGE